

PX110B110H1

Serad, Danielle

From: Cameron, Roger
Sent: Wednesday, January 15, 2014 3:43 PM
To: Balefsky, Lee
Subject: FW: Spoliation motion response

FYI

From: Bryan Aylstock [mailto:BAylstock@awkolaw.com]
Sent: Wednesday, January 15, 2014 3:43 PM
To: Cameron, Roger; Andrew N. Faes; Greg Bentley; Holly Gibson
Cc: Joe Zonies (External); Mary Liu; Renee Baggett; vcarnevale@crivellawest.com
Subject: RE: Spoliation motion response

Like it. Mary please send this to Vince...

From: Cameron, Roger [mailto:Roger.Cameron@KlineSpecter.com]
Sent: Wednesday, January 15, 2014 2:21 PM
To: Andrew N. Faes; Greg Bentley; Holly Gibson
Cc: Joe Zonies (External); Mary Liu; Bryan Aylstock; Renee Baggett
Subject: RE: Spoliation motion response

How about that Dan Smith “destroy” after reviewing email? The attachment was stripped from the original custodial email and the original custodial email has been destroyed or not produced. The email that we do have says in the re line that it was forwarded but the original email does not appear. We can’t tell with certainty whether the brochure that Shea found is Smith’s attachment to the original email, as there is no source/custodian file for Robert Tannhauser, whom Smith cc’d on the faked up, forwarded copy.

Also what about the 100,000s, if not millions, of documents that say source “unknown”. If any one of the examples turns up with an unknown source, it might as well be spoliated as it does us no good at all.

From: Andrew N. Faes [mailto:afaes@wcllp.com]
Sent: Wednesday, January 15, 2014 11:54 AM
To: Greg Bentley; Holly Gibson; Cameron, Roger
Cc: Zonies, Joe; Mary Liu; Bryan Aylstock; 'Renee Baggett'
Subject: Spoliation motion response

One of the defense arguments in their response to our spoliation motion is that there is no real harm done by the destruction or loss of certain custodians’ files because those documents can be found in multiple other places. They gave several specific examples, such an e-mail from Price St. Hilaire (whose file was completely lost) which was found in the custodial files of 8 other custodians. We want to counter with our own specific examples of documents which are key to our case and are only found in the custodial file of one individual. So far we have come up with:

1. Cecchini “scar tissue” e-mail –P-1432 — did not find in anyone else’s custodial file
2. Meng Chen meeting agenda T-3322 – did not find in anyone else’s custodial file
3. Meng Chen T-3325 – did not find in anyone else’s custodial file
4. Boris Batke T-1230 eth.mesh.0547935- TVT slings are microporous. Only found in one Batke’s custodial file

Can you guys think of any other candidates? We would ideally like to come up with at least 7-8 examples and right now we only have 4.

Andrew N. Faes

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